

RESOLUTION NO. 74746

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ
DENYING A CONDITIONAL USE PERMIT TO ALLOW THE OFF-SALE
OF ALCOHOL AT AN EXISTING RETAIL STORE ON THE PROPERTY
LOCATED ON THE NORTHEAST CORNER OF MERIDIAN AVENUE
AND BRANHAM LANE (4614 MERIDIAN AVENUE) ON A 0.92 GROSS
ACRE SITE**

FILE NO. CP08-050

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 5, 2008, an application (File No. CP08-050) was filed for a Conditional Use Permit for the purpose of the sale of beer, wine and liquor for off-site consumption in an existing 1,898 gross square foot retail space on certain real property situated in the CP Commercial Pedestrian Zoning District and located on the northeast corner of Meridian Avenue and Branham Lane (4613 Meridian Avenue), in the City of San José, California (which real property is hereinafter referred to as the "subject property"); and

WHEREAS, the subject property is all that real property described in the legal description of the subject property attached hereto as Exhibit "A" and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission, and City Council on appeal, each conducted a public hearing on said application File No. CP08-050, notices of which hearings were duly given; and

WHEREAS, at said respective public hearings, the Planning Commission and this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter before them; and

WHEREAS, at said respective hearings, the Planning Commission and this City Council received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement on this matter, and the City Council also received the report and recommendation of the Planning Commission on this matter; and

WHEREAS, at said respective hearings, the Planning Commission and this City Council received in evidence a development plan for the subject property entitled, "Site

Plan, Discount Cigarettes and Liquor, 4614 Meridian Ave., San José, CA 95124," dated October 15, 2008, and said development plan is on file in the Department of Planning, Building and Code Enforcement, is available for inspection by anyone interested therein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearings were all conducted in all respects as required by the San José Municipal Code and the rules of the Planning Commission or this City Council, respectively, as appropriate.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ AS FOLLOWS:

After considering all evidence presented to the City Council at its Public Hearing on this matter, the City Council finds that the following are the relevant facts regarding this proposed project:

1. The subject site is located within the CP Commercial Pedestrian Zoning District.
2. This site has a designation of Neighborhood Community Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram. Commercial uses such as the proposed retail store are consistent with the General Commercial designation.
3. The proposed project is to allow the off-sale of alcoholic beverages at Discount Cigarettes.
4. The applicant has indicated his intention to sell beer, wine and liquor (distilled spirits) as well as standard convenience items in addition to the existing sale of cigarettes.
5. The applicant has indicated that approximately 25% of the sales floor area would be used for alcoholic beverages.
6. The project site has adequate parking for the existing and proposed use.
7. Under the provisions of Section 15301(a), Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality.
8. The project site is developed with a multi-tenant retail shopping center.
9. Long's Drug Store and Lunardi's are the only two other off-sale of alcohol outlets within a 1,000-foot radius of the subject site, both located within the same shopping center as the proposed use, but offering a much wider range of retail goods than the

proposed use (the proposed use contemplates the sale of primarily alcoholic beverages and cigarettes, with some small snack items as well).

10. Both adjacent off-sale establishments in the shopping center maintain an off-sale general liquor license (beer, wine and distilled spirits).
11. The Police Department memorandum indicates that the project site is not located within an area of high crime, but the addition of one additional ABC license will lead to a high concentration of existing liquor licenses in this shopping center and 75% of off-sale of alcoholic beverages establishments in the census tract would then be located in this shopping center alone.
12. The City does not need to grant a Determination of Public Convenience or Necessity because the site is not located an area that is currently over-concentrated in sales of alcohol or crime with respect to the subject census tract.
13. The subject site is surrounded by single-family residential uses to the north, west and east, and commercial uses are located across Branham Lane to the south.
14. Branham High School is located at the southwest corner of Branham Lane and Meridian Avenue, approximately 775 feet from the subject tenant space, and kitty-corner from this shopping center.
15. The project site is located within 150 feet from residentially zoned property on Ilikai Avenue to the north.
16. The project site is located within 500 feet of residential care facilities on Ilikai Avenue and on Calle de Tosca.
17. The Planning Commission held a Public Hearing on the subject proposal and recommended denial.

The City Council concludes and finds, based on the analysis of the above facts in regards to the Conditional Use Permit, that:

1. For the use located closer than five hundred (500) feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the City, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one-thousand (1,000) foot radius from the proposed location; and
2. The proposed location of the off-sale of alcoholic beverages use would result in a total of no more than four (4) establishments that provide alcoholic beverages for off-site consumption within a one thousand (1,000) foot radius from the proposed location, and therefore 20.80.900.A.2 is not an applicable finding to be made for this proposal.
3. The use is located closer than five hundred (500) feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than one hundred fifty (150) feet from any residentially zoned property, where the proposed

use is situated and oriented in such a manner that would adversely affect such residential use.

Finally, based on the above-stated findings, the City Council finds that:

1. The proposed use at the location requested will:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility of value of the property of other persons located within the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare;most specifically based upon the facts set forth in Facts 9 -16 recited above.
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences parking, loading facilities, landscaping and other development features prescribed in this Title, or as is otherwise required in order to integrate said use with the surrounding area.
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

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Based upon the above findings, the project applied for under the proposed conditional use permit is hereby **denied**.

DENIED this **day of December 16, 2008**, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, LICCARDO, NGUYEN,
OLIVERIO, PYLE, WILLIAMS, REED.

NOES: NONE.

ABSENT: CORTESE.

DISQUALIFIED: NONE.

CHUCK REED,
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.